IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

LA.App..No. 1117 of 2003()

LAR.9/1999 of II ADDL.SUB COURT,THRISSUR
.....

APPELLANT: CLAIMANT

K.M.FATHIMA, MANAGING DIRECTOR,
AMBADI PILGRIM RESORT (PRIVATE LIMITED),
MANATHALA, CHAVAKKADU.

BY ADV. SRI.V.P.YOHANNAN
SRI.A.C.CHACKO
SRI.K.P.DANDAPANI

RESPONDENTS: RESPONDENTS
----

1. THE SPECIAL TAHSILDAR (LA) GENERAL,
THRISSUR.

2. THE ADMINISTRATOR, GURUVAYUR DEVASWOM
P.O.GURUVAYUR.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA
SRI.N.RAJAGOPALAN NAIR,SC,GURUVAYUR D.B

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. No. 1117 of 2003

Dated: October 29, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This appeal by the claimant is directed against the judgment and decree dated 22.6.2002 in LAR No.9/1999 on the file of the Sub Court, Thrissur.

2. An extent of 0.4570 hectares of dry land in Sy.No.119/5-16A of Guruvayur village belonging to the claimant was acquired for the purpose of providing amenities to pilgrims to Guruvayur temple. Sec.4(1) notification was published on 14.11.1995. The land acquisition officer fixed the land value of the acquired land at Rs.34682.29 per cent. The appellant claimed land value at the rate of Rs.2 lakhs per cent. Before the Reference Court the appellant/claimant limited the claim at Rs.1,50,000/- per cent which, according to her is the market value fixed by the District Collector, Thrissur for the purchase of the property covered by Ext.A1 sale deed. In support of the claim for enhanced land value, the claimant examined AWs.1 to 3 and produced and marked Exts.A1 and A2. On the respondents' side RW.1 was examined and Exts.R1 to R9 are marekd. Exts.X1, X1(a) and X2 are also marked.

3. Strangely enough, the court below observed that the most appropriate document for fixing the land value of the acquired land is the document relating to the acquired land itself which is produced by the

respondent as Exts.R2 to R8. The court below rejected Ext.A1 for the reason that Ext.A1 purchase was by negotiation and hence the land under Ext.A1 sale-deed is not comparable with the acquired land and that the sale of the property as per Ext.A1 was on 6.1.1998 which is after the sec.4(1) notification. Ext.A2 was also not relied on for the reason that the extent of land covered by Ext.A2 is only 3 cents. After rejecting Exts.A1 and A2, the court below observed that more land value than the value to which the claimant is entitled has been awarded by the land acquisition officer and hence the claimant is not entitled to any enhancement in compensation. Thus the reference is answered and the court held that the claimant is not entitled to get any enhancement in compensation.

4. Ext.X1 is the report of the commissioner who had inspected the site and reported the importance of the locality wherein the acquired land is situated. As per Ext.X1 report the acquired land is situated about 650 metres west of the famous Guruvayur Sreekrishna Temple. It is also reported that several commercial buildings are situated on the eastern and northern part of the acquired land, that a shopping complex is situated just opposite to the acquired land, a three storeyed lodge by name 'Govindam Residency College' is situated on the north of the aforesaid shopping complex. It is also reported that the main road is passing very near to the acquired land facing Ext.A1 property which is situated adjacent to the acquired land. The distance between Ext.A1 land which is facing the main road and the acquired land is only 25 metres and that the acquired land is

facing the side road having 10 ft. width. It is also reported that there are several institutions including post-office, temple view apartments, banks and other commercial buildings situated on the opposite side of the PWD Road facing Ext.A1 land. It is also reported that the KSRTC bus station, municipal rest house etc. are also situated near to the acquired land. The commissioner also reported that the acquired land is ideal for the construction of commercial buildings and residential buildings.

5. Learned counsel for the claimant contended before us that the property under Ext.A1 sale-deed and the acquired land are situated close by and therefore the claimant is entitled to the land value fixed for Ext.A1 land. According to the learned counsel, Ext.A1 is situated next to the acquired land which was purchased by the Central Government for the Central Excise Department at Rs.1,50,000/- per cent. The counsel also contended that since the location of the acquired land is in the vicinity of Guruvayur temple and considering its proximity to important commercial and other establishments, it is only fair and just to award the same value as given in Ext.A1 sale deed.

6. We have also noticed the importance of the land and its potentiality considering its location in the vicinity of Guruvayur Sreekrishna Temple. We are of the view that the land located in the vicinity of Guruvayur temple is very valuable and fetches higher price than most of the lands similarly situated in any other municipality in Kerala. We have also noticed the fact that though Ext.A1 sale deed was executed on

6.9.1998, the negotiation for the sale was started in the year 1996. Ext.X2 is the communication issued by the Assistant Commissioner of Central Excise, Thrissur Division to the owner of Ext.A1 land. The communication is dated 2.5.1996. The offered price at the instance of the Department is Rs.1.5 lakhs per cent. Ext.X2 communication requests the land owners to communicate whether they are willing to sell the land to the department at the said rate. So it is abundantly clear that the price shown in Ext.A1 sale deed is the price fixed on or before 2.5.1996. There is only six months' gap between the sec.4(1) notification and Ext.X2. We have also noticed the fact that Ext.A1 land is facing the PWD road and the acquired land is located on the rear side of Ext.A1 land. Considering the land value fixed in Ext.A1 sale deed and the fact of commercial importance of the acquired land, we are of the view that Rs.75000/- per cent will be a fair and reasonable land value for the acquired land.

7. In the result, the appellant/claimant is allowed to realise from the respondent and its assets:-

i) land value at the rate of Rs.75000/- per cent for the property having an extent of 0.4570 hectares less the amount already received.

ii) the amount equivalent to 12% per annum on the enhanced land value from the sec.4(1) notification till the date of taking possession or the date of the award, whichever is earlier.

iii) The claimant is also entitled to 30% solatium on the enhanced land value.

iv) 9% interest per annum on the enhanced compensation amount for a period of one year from the date of taking possession and thereafter interest at the rate of 15% per annum till the amount is deposited in court. The claimant is also entitled to interest on solatium.

The respondent is given three months' time to deposit the enhanced compensation.

8. Since the appeal was filed informa pauperis, the District Collector shall take proceedings for realisation of the court fee payable in the appeal.

The appeal is partly allowed. There will be no order as to costs.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. No.1117 of 2003

JUDGMENT

29.10.2007